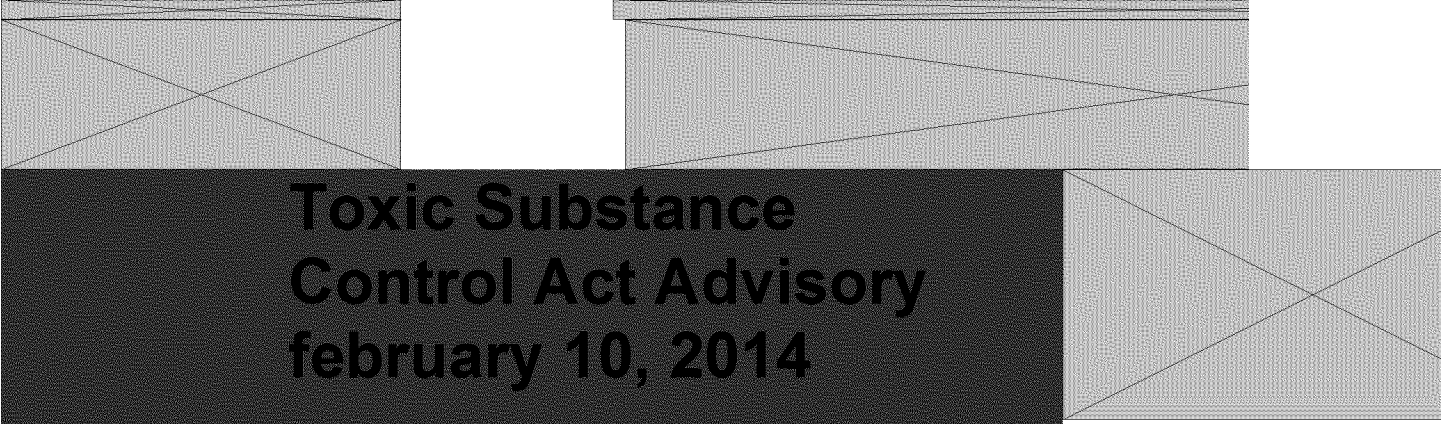


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**From:** McKenna Long & Aldridge LLP  
**Sent:** Mon 2/10/2014 9:12:50 PM  
**Subject:** MLA TSCA Advisory: MLA's Robert A. Matthews Testifies at House Hearing Amid Renewed Momentum Towards TSCA Reform

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## Toxic Substance Control Act Advisory february 10, 2014

### MLA's Robert A. Matthews Testifies at House Hearing Amid Renewed Momentum Towards TSCA Reform



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On February 4, 2014, MLA's Robert A. Matthews testified on behalf of firm client the Consumer Specialty Products Association (CSPA) at a hearing held by the House Energy and Commerce Subcommittee on Environment and the Economy on possible reforms to the Toxic Substances Control Act (TSCA). The hearing addressed EPA's testing and prioritization authority under TSCA Section 4 and information collection authority under TSCA Section 8. The principle focus of Bob's testimony was the need for EPA to obtain use and exposure-related information during the prioritization process. Please click [here](#) for a copy of the testimony provided by Bob on behalf of CSPA and click [here](#) to view video of the hearing itself. (Bob's initial five minute presentation can be seen in the video at 21:25; two of the more substantial Q & A exchanges can be seen at 1:29:47 and 1:35:42).

### HOUSE HEARING HIGHLIGHTS

In the written testimony submitted on behalf of CSPA, Bob emphasized four principle points: first, that the chemicals management program under TSCA must be risk-based; second, that one key to an effective risk-based program was screening chemicals during the prioritization phase to ensure EPA addresses the chemicals of highest concern; third, that in order to properly screen and prioritize, EPA must rely not only on hazard information, but also on use and exposure-related information; and finally, that EPA should be directed to obtain use and exposure-related information from downstream processors such as the CSPA members who place formulated household and institutional products on the market. During a series of Q & A exchanges with members of the Subcommittee, Bob underscored several of the same points, e.g., that the revised statute should direct EPA to collect use and exposure-related information from these formulators for specific chemicals at the time they are undergoing review under the Section 4 prioritization process. He indicated that the information should be targeted and focused so as to align with EPA's actual screening-level data needs.

Several days after the Hearing, the Subcommittee Chairman, Rep. John Shimkus (R-Ill.), announced that the House plans to issue its own draft TSCA reform legislation, and will then hold a hearing.

### PARALLEL SENATE HEARING AND ACTIVITIES

Another important factor impacting the discussions on TSCA modernization is the Congressional attention focused on last month's chemical spill in the Elk River. At the exact same time that the House was holding its hearing on TSCA modernization, the Senate Environment and Public Works (EPW) Committee held a hearing on the January 9th spill in West Virginia that resulted in 300,000 residents being without tap water for days. At the hearing, Senator Tom Udall (D-NM), the top Democratic advocate for the current Senate TSCA reform bill, S. 1009, the Chemical Safety Improvement Act

("CSIA"), asserted that the chemical spill demonstrated the importance of TSCA modernization. Specifically, he stated that under the CSIA, EPA and the public would have had access to more information on the health effects of 4-methylcyclohexane methanol ("MCHM"), the chemical which contaminated the Elk River, then they have under current law. Senate EPW Committee Ranking Member David Vitter (R-LA) indicated at the hearing that, in an attempt to address the concerns raised by EPW Committee Chair Barbara Boxer (D-CA), NGOs and other stakeholders, progress is being made on changes to the CSIA. While much remains to be done, the Elk River accident, in galvanizing both Congress and the public's attention, clearly has helped create additional impetus for a compromise to be reached.

Following last week's EPW Committee hearing, we understand that Senators Vitter and Udall are attempting to secure the co-sponsorship of a group of additional Senate Democrats and Republicans. Additional bipartisan cosponsors could also bolster momentum for TSCA modernization efforts over the coming weeks and months.

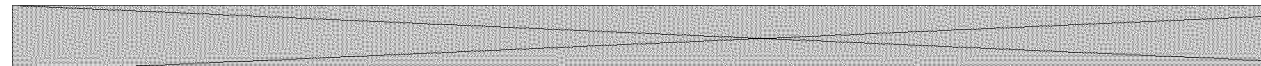
#### RENEWED MOMENTUM, YES; BUT CHALLENGES REMAIN

Notwithstanding these significant developments, there remains considerable uncertainty regarding adoption of TSCA modernization legislation during this Congress due to a number of procedural and substantive challenges. On the House side, even as Chairman Shimkus announced his plans to issue a draft bill, Rep. Waxman (D-Calif.) expressed unhappiness that Republicans had not shared their emerging draft with the Democrats. And in the Senate, disagreements between Senators Vitter and Boxer as to whether the CSIA is the best vehicle for TSCA modernization continue to delay progress.

Substantively, while there appears to be consensus on some of the significant changes to existing TSCA that the CSIA would make, there are several key provisions for which such consensus is clearly lacking, underlying the disagreements between Senators Vitter and Boxer. Among the most significant unresolved issues are: the safety standard to be applied in Safety Assessments; the inclusion of provisions specific to so-called vulnerable sub-populations; preemption of state law chemicals management programs (with California's Prop 65 and Green Chemistry initiatives clearly at issue); and the need for deadlines directing EPA to complete program mileposts (e.g., prioritization) within specified time lines.

#### THE ROAD AHEAD

With potential renewed momentum for TSCA modernization created by the Elk River accident and the recent House and Senate hearings, we are closely tracking these and other developments and, as circumstances warrant, we will provide additional Advisory updates. Please visit the MLA TSCA Clearinghouse by clicking [here](#) and contact our TSCA and Government Affairs practitioners identified in this Advisory for more information about TSCA reform legislation in the Senate and House.



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